

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

IN RE DAVID FOLSOM, ) Civil No. 10cv2440 L (NLS)  
Debtor. ) Bankruptcy No. 09-08919-B7

DAVID FOLSOM; PAMELA BRODWOLF-FOLSOM, )  
ORDER AFFIRMING THE DECISION OF THE BANKRUPTCY COURT )  
)

Appellants,  
v.  
GERALD H. DAVIS, Chapter 7 Trustee,  
Appellee.

Bankruptcy No. 09-08919-B

Bankruptcy No. 09-08919-B7

Adversary No. 10-90142-B7

**ORDER AFFIRMING THE  
DECISION OF THE BANKRUPTCY  
COURT**

Debtor David Folsom and Pamela Brodwolf-Folsom<sup>1</sup> appeal the decision of the Bankruptcy Court granting the Chapter 7 Trustee's motion for summary judgment. The appeal has been fully briefed. For the reasons set forth below, the decision of the Bankruptcy Court is affirmed.

## I. Factual Background

Debtor and Pamela Brodwolf-Folsom entered into a premarital contract on October 26, 1990, concerning, *inter alia*, community property.

<sup>1</sup> Pamela Brodwolf-Folsom did not join in the filing of debtor's bankruptcy petition.

1                   Community Property: The parties do not intend to establish joint checking and  
 2 joint savings accounts. In the event that any joint accounts are established, the  
 3 funds deposited in said accounts shall be the community property of the parties.  
 4 Any property, real or personal, acquired after marriage and held by the parties  
 5 jointly, shall be the community property of the parties. Any assets acquired from  
 6 the funds in the parties joint accounts will be community property.

7 (Premarital Contract, ¶6, RA<sup>2</sup>, Exh. 1, A)

8                   In 2006, Debtor and Pamela Brodwolf-Folsom opened a joint checking account, *i.e.*, the  
 9 account was held in both names, at Bank of America. Moneys were deposited into the joint  
 10 account and those funds were wired out of the account to Great American Title Co. in order to  
 11 purchase eight condominiums in Missouri. Title to the condominiums was conveyed to “Pamela  
 12 Brodwolf-Folsom, as a married woman.” There are no liens or encumbrances on the  
 13 condominiums.

14                   In the answer to the complaint filed in the Bankruptcy Court, Brodwolf-Folsom states that  
 15 she owned other real property, specifically her Fuerte Drive property, that was her separate  
 16 property under the premarital contract. She borrowed money using her separate property as  
 17 security for repayment and used the separate property loan proceeds to purchase the Missouri  
 18 condominiums. As a result, Debtor and Brodwolf-Folsom contend that no community property  
 19 or funds were used to purchase the Missouri condominiums, David has no community property  
 20 interest in the condominiums, and the condominiums are not property of the bankruptcy estate.

21                   The Bankruptcy Court disagreed finding that based on the language of their Premarital  
 22 Contract, the joint account appellants opened was community property and thus the  
 23 condominiums purchased with the funds from the account were the property of the bankruptcy  
 24 estate.

## 25                   **II. Standard of Review**

26                   When considering an appeal from the bankruptcy court, a district court applies the same  
 27 standard of review that a circuit court would use in reviewing a decision of a district court. *See*  
*Ford v. Baroff (In re Baroff)*, 105 F.3d 439, 441 (9th Cir. 1997). On appeal, a district court must  
 28 review a bankruptcy court's findings of fact under the clearly erroneous standard and its

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<sup>2</sup> Record on Appeal.

1 conclusions of law *de novo*. FED. R. BANKR. P. 8013; *see also Sigma Micro Corp. v.*  
 2 *Healthcentral.com* (In re *Healthcentral.com*), 504 F.3d 775, 783 (9th Cir. 2007). The test for  
 3 clear error is not whether the appellate court would make the same findings, but whether the  
 4 reviewing court, based on all of the evidence, has a definite and firm conviction that a mistake  
 5 has been made. *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985). A reviewing court  
 6 may not overturn a decision, even if it would have weighed the evidence in a different manner,  
 7 so long as the trial court's view of the evidence is plausible in light of the entire record. *Id.* at  
 8 573-74, 105 S. Ct. 1504. In applying the clearly erroneous standard, the appellate court views the  
 9 evidence in the light most favorable to the party who prevailed below. *Lozier v. Auto Owners*  
 10 *Ins. Co.*, 951 F.2d 251, 253 (9th Cir. 1991).

11 A grant of summary judgment is reviewed *de novo*. *United States v. City of Tacoma*, 332  
 12 F.3d 574, 578 (9th Cir. 2003). Under the Federal Rules of Civil Procedure, a court shall grant  
 13 summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on  
 14 file, together with the affidavits, if any, show that there is no genuine issue as to any material  
 15 fact and that the moving party is entitled to a judgment as a matter of law.” FED. R. CIV. P. 56(c).  
 16 The moving party bears the initial burden of demonstrating the absence of a genuine issue of  
 17 material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323. The burden then shifts to the  
 18 nonmoving party to “set forth specific facts showing that there is a genuine issue for trial.” FED.  
 19 R. CIV. P. 56(e). The nonmoving party must identify factual disputes that “might affect the  
 20 outcome of the suit under governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
 21 (1986).

22 **III. Issue on Appeal**

23 Did the Bankruptcy Court err in finding as a matter of law that a joint account the Debtor  
 24 and his wife was community property under a premarital contract and therefore, the funds from  
 25 that account that were used to purchase condominiums were the property of David Folsom's  
 26 bankruptcy estate notwithstanding evidence showing a lack of intent to create community  
 27 property.

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1 **IV. Discussion**

2 As noted above, the Debtor and Brodwolf-Folsom entered into a valid Premarital  
 3 Contract<sup>3</sup> on October 26, 1990, that provides for the parties' intent to retain property as separate  
 4 but also specifically allows and provides for the creation of community property: "*In the event*  
 5 *that any joint accounts are established*, the funds deposited in said accounts shall be the  
 6 community property of the parties." (Premarital Contract, ¶6, Record on Appeal (RA), Exh. 1,  
 7 A. (emphasis added))

8 Under California's Probate Code, a joint account means an account payable on request to  
 9 one or more of two or more parties whether or not mention is made of any right of survivorship.  
 10 CAL. PROB. CODE § 5130. It cannot be disputed that the Debtor and Brodwolf-Folsom opened a  
 11 joint checking account at Bank of America, *i.e.*, the Bank of America account was held in both  
 12 Debtor's and Brodwolf-Folsom's names. But Debtor and Brodwolf-Folsom provide declarations  
 13 that the joint account was created for the convenience of Brodwolf-Folsom, and Debtor had no  
 14 right to access the account without the express permission of Brodwolf-Folsom. Notwithstanding  
 15 these declarations, appellants present no evidence that Debtor could not have accessed the funds  
 16 in the joint account had he wanted to do so. Appellants' declarations do not and cannot alter their  
 17 Premarital Contract or California's Probate Code.

18 Appellants also argue that the Premarital Contract, ¶ 6, requires that *community* funds be  
 19 deposited into the joint account in order for the joint account to acquire the status of community  
 20 property. The Premarital Contract neither states nor suggests such a reading. Instead, as provided  
 21 in the Premarital Contract, it is the establishment of the joint account that creates the community  
 22 property and "the funds deposited in said accounts shall be the community property of the  
 23 parties." (Premarital Contract, ¶6, Record on Appeal, Exh. 1, A)

24 Because the account was in both parties' names, both parties had access to and control  
 25 over the account under California law, and the Premarital Contract is valid and enforceable, the  
 26 account funds are community property notwithstanding appellants' declarations to the contrary.

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28 <sup>3</sup> California Family Code § 1500.

1        Between March 30, 2006 and April 26, 2006, the joint checking account statement from  
 2 Bank of America shows total deposits of \$282,233.76 for Pamela M. Brodwolf- Folsom and  
 3 David Folsom. Three withdrawals during that period were used to make payment for the  
 4 condominiums. The deeds transferring title to the eight condominiums were conveyed to  
 5 "Pamela Brodwolf Folsom, a Married Person."

6        The funds used to purchase the condominiums were from appellants' joint checking  
 7 account and those funds were community property. Property acquired with community funds or  
 8 property is also community property. *Katz v. U.S.*, 382 F.2d 723, 728 (9th Cir. 1967).

9        Appellants argue that their declarations concerning their intent have been overlooked by  
 10 the Bankruptcy Court. In their reply memorandum, appellants appear to concede that they made  
 11 a mistake in creating the joint account and a transmutation cannot be caused by such a mistake.  
 12 In other words, appellants are not arguing that the Premarital Contract is invalid nor are they  
 13 seeking to rescind the Premarital Contract. Instead, they contend that *in this instance* they made  
 14 a mistake in setting up a joint account which, under their valid Premarital Contract, created a  
 15 community property situation. Although sympathetic to appellants' situation, their alleged error  
 16 in setting up the joint account as expressed in their declarations is not determinative given the  
 17 valid and unmistakable terms of the Premarital Contract. The Premarital Contract provides for  
 18 either a separating writing, under paragraph 13, or the depositing of funds into a joint account,  
 19 under paragraph 6, for transmuting separate property into community property. Notwithstanding  
 20 their stated error in creating the joint account, the terms of the Premarital Contract cannot be  
 21 legally ignored or voided.

22 **V. Conclusion**

23        Based on the foregoing, **IT IS ORDERED** affirming the decision of the Bankruptcy  
 24 Court.

25        **IT IS SO ORDERED.**

26 DATED: August 8, 2011

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 28   
 M. James Lorenz  
 United States District Court Judge

1 COPY TO:

2 HON. NITA L. STORMES  
3 UNITED STATES MAGISTRATE JUDGE

4 ALL COUNSEL/PARTIES

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